

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES and STATE OF NEW YORK  
ex rel. XIOMARY ORTIZ and JOSEPH GASTON,

Plaintiffs,

V.

MOUNT SINAI HOSPITAL, MOUNT SINAI  
SCHOOL OF MEDICINE, and MOUNT SINAI  
RADIOLOGY ASSOCIATES,

**Defendants.**

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DATE FILED: 2/28/18

13 Civ. 4735 (RMB)

## STIPULATION AND ORDER OF SETTLEMENT BETWEEN THE UNITED STATES AND RELATORS

WHEREAS, this Stipulation and Order of Settlement and Release (the “Relators Settlement Stipulation”) is entered into between the United States of America, by its attorney Geoffrey S. Berman, United States Attorney for the Southern District of New York (the “United States”), and relators Xiomary Ortiz and Joseph Gaston (“Relators”), through their authorized representatives (collectively the “Parties”);

WHEREAS, on or about July 9, 2013, Relators filed an action in the United States District Court for the Southern District of New York, captioned *United States and State of New York ex rel. Xiomary Ortiz and Joseph Gaston v. Mount Sinai Hospital, Mount Sinai School of Medicine, and Mount Sinai Radiology Associates*, 13 Civ. 4735 (RMB), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (“FCA”);

WHEREAS, on or about March 5, 2014, the United States filed a Notice of Declination, setting forth its intention to decline to intervene in the action;

WHEREAS, on January 3, 2018, Relators and defendants Mount Sinai Hospital, Mount Sinai School of Medicine, and Mount Sinai Radiology Associates (“Defendants”) entered into a

settlement agreement resolving Relators' claims in this action (the "Settlement Agreement"), which provided for, among other things, a payment by Defendants to the United States in the amount of \$4,400,000.00 (the "Settlement Amount");

WHEREAS, on or about January 16, 2018, Defendants paid the Settlement Amount to the United States.

WHEREAS, Relators have asserted that, pursuant to 31 U.S.C. § 3730(d)(1), they are entitled to receive a portion of the Settlement Amount paid to the United States (the "Relators' Claim"); and

WHEREAS, the Parties hereto mutually desire to reach a full and final compromise of the Relators' Claim against the United States for a portion of the Settlement Amount, pursuant to the terms set forth below,

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations in this Relators Settlement Stipulation, and for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. The United States will pay Relators 30% of the Settlement Amount, for a total of \$1,320,000.00 (the "Relators' Share"). The United States shall pay the Relators' Share to Relators by electronic funds transfer to Relators' counsel, Timothy J. McInnis, Esq.
2. Relators agree that this settlement is fair, adequate, and reasonable under all circumstances, and will not challenge the Settlement Amount pursuant to 31 U.S.C. § 3730(c)(2)(8), and expressly waive the opportunity for a hearing on any such objection, pursuant to 31 U.S.C. § 3730(c)(2)(8).

3. In agreeing to accept payment of the Relators' Share, and upon payment thereof, Relators, for themselves and their heirs, successors, attorneys, agents and assigns, release and are deemed to have released and forever discharged the United States, and its agencies, officers, employees, servants, and agents, from any claims pursuant to 31 U.S.C. § 3730 for a share of the Settlement Amount, and from any and all claims against the United States, and its agencies, officers, employees, servants, and agents, arising from or relating to the allegations in the Relators' Complaint or Amended Complaint.

4. This Relators Settlement Stipulation does not resolve or in any manner affect any claims the United States has or may have against Relators arising under U.S. Code, Title 26 (Internal Revenue Code), or any claims arising under this Relators Settlement Stipulation.

5. This Relators Settlement Stipulation shall inure to the benefit of and be binding on only the Parties, their successors-in-interest, assigns, transferees, and heirs.

6. Each of the Parties represents that he or she has the full power and authority to enter into this Relators Settlement Stipulation.

7. This Relators Settlement Stipulation shall become final, binding, and effective only upon entry by the Court.

8. This Relators Settlement Stipulation shall be governed by the laws of the United States. The United States and Relators agree that the exclusive jurisdiction and venue for any dispute arising under this Stipulation shall be the United States District Court for the Southern District of New York.

9. This Relators Settlement Stipulation constitutes the entire agreement of the United States and Relators with respect to the subject matter of this Relators Settlement

Stipulation and may not be changed, altered, or modified, except by a written agreement signed by the United States and Relators specifically referring to this Relators Settlement Stipulation.


10. This Relators Settlement Stipulation is effective on the date that it is entered by the Court.

11. This Relators Settlement Stipulation may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

Dated: New York, New York  
~~January~~ 9, 2018  
February

GEOFFREY S. BERMAN  
United States Attorney for the  
Southern District of New York  
*Attorney for United States of America*


By:



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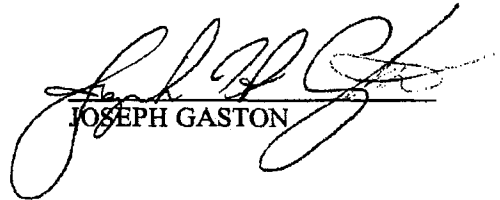
Dated: New York, New York  
~~January~~ 5, 2018  
Feb

Relator

  
Xiomary ORTIZ

Dated: New York, New York  
~~January~~ 6, 2018  
Feb


Relator

  
JOSEPH GASTON

Dated: New York, New York  
~~January~~ 6, 2018  
Feb

Attorney for Relators

By:

  
TIMOTHY MCINNIS, Esq.  
McInnis Law  
521 Fifth Avenue, 17<sup>th</sup> Floor  
New York, New York 10175  
(212) 292-4573

SO ORDERED:

RMB, USDJ  
THE HONORABLE RICHARD M. BERMAN  
United States District Judge

Date: 2/28/18